

**MINUTES**  
of the  
**LEGISLATIVE CONSUMER COMMITTEE**

September 13, 2006  
State Capitol, Room 137, Helena, MT

**COMMITTEE MEMBERS PRESENT**

Representative George Groesbeck, Vice Chairman, via conference call  
Representative Walter McNutt  
Senator Ken Toole

**STAFF PRESENT**

Robert A. Nelson, Consumer Counsel  
Larry Nordell, Economist  
Mary Wright, Attorney  
Mandi Shulund, Secretary

**VISITORS PRESENT**

Mike Burke, Budget and Program Planning Office  
Cheryl Gillespie, Qwest  
Todd Everts, Legislative Services Division  
Gary Forrester

**CALL TO ORDER**

The meeting was called to order by Representative Groesbeck.

**MINUTES OF THE PREVIOUS MEETING**

MOTION: Senator Toole moved approval of the July 14, 2006 meeting minutes with redline additions to pages 12 and 21.

VOTE: The motion passed unanimously.

**MARY WRIGHT PROVIDED THE FOLLOWING HIGHLIGHTS OF TELECOM CASES CURRENTLY PENDING:**

**Eligible Telecommunications Carrier Cases**

ETC cases are instances when companies apply for Federal Universal Service Funds.

D2004.1.6 - Triangle Communications Systems, Inc: Triangle is a cellular affiliate of Triangle Telephone Cooperative and Central Montana Communications, Inc. A hearing was held in Harlem on 8/10/06 and the briefing stage is underway.

The next five ETC applications have been withdrawn but at least three are expected to be refiled.

D2003.10.156 - 3 Rivers Wireless PCS, Inc., dba 3 Rivers Wireless: 3 Rivers is the wholly-owned cellular affiliate of 3 Rivers Telephone Cooperative. This application was filed on 10/29/03 requesting status in the exchanges served by its landline affiliate in Qwest exchanges within the 3 Rivers Wireless licensed service area.

D2004.3.36 - Blackfoot Communications, Inc: Blackfoot is a wireline and wireless affiliate of Blackfoot Telephone Cooperative applying for status in certain Qwest exchanges. This application was filed on 3/10/04.

D2004.8.127 - VCI Company: VCI requested designation in order to provide local exchange service to Montanans qualifying for the Montana Telephone Assistance

Plan in Qwest's service area using a combination of its own facilities and facilities leased from Qwest. This application was filed on 8/6/04.

D2004.1.8 - Northern Communications, Inc: Northern requested ETC status in the exchanges served by Northern Telephone Cooperative. This application was filed on 1/16/04.

D2004.1.5 - InterBel Wireless, Inc: InterBel requested ETC status in the exchanges served by InterBel Telephone Cooperative, Inc. and Citizens Communications Company. This application was filed on 1/16/04.

### **Qwest**

N2006.6.81 - Qwest Tariff Transmittal 06-10 Residence and Business Customer Incentive Programs: MCC has not yet taken a position on this application, filed on 6/2/06, but has supported similar applications in the past. A hearing is set for 1/07.

D2006.3.39 - Qwest Corporation's Notification to Offer Certain CLASS Features, AIN Features, Custom Calling Features, Listings and Packages as Not Regulated:

In this filing, Qwest is requesting to basically deregulate all services except the access lines coming into a residence or business. Qwest's claim is based on statutory construction and that none of these services fit the definition. MCC filed testimony opposing the request because Qwest has not shown there is a competitive market for the services. Senator Toole asked what services are regulated and what Qwest is proposing to deregulate. Mary said Qwest is proposing to deregulate vertical services, such as call waiting, call forwarding and caller ID, which can not be provided without the access line. Qwest is also proposing to deregulate packages for services, which include the access line to the residence or business. Senator Toole asked if there is any competition regarding vertical services. Mary said the fact that competitive markets have not developed is the basis for MCC's opinion.

## **Intercarrier Compensation**

Intercarrier Compensation is currently receiving a lot of attention. The Commission is planning a roundtable in November to get industry comments on the proposed Missoula Plan, which came out of a series of workshops held in Missoula. The Commission previously filed comments with the Federal Communications Commission (FCC) opposing sections of the proposal that appear harmful to rural carriers and their customers. MCC will participate in the November roundtable discussion.

## **Court Cases**

Cause No. CDV 2003-464 - Qwest v. PSC and MCC: This case resulted from an attempt by the Commission to address Qwest's over-earning. Qwest resisted the attempt, prevailing in District Court. The case is now before the Supreme Court and a decision is pending. Based on Qwest's 2005 Annual Report filed with the Commission, a return on equity of just below 70% was shown. Senator Toole asked if Qwest's argument was that the Commission could not ask for information leading to over-earning. Mary said Qwest felt the Commission can request anything but can not force Qwest to justify current rates because of what is referred to as the "filed rate doctrine."

## **Arbitration**

D2005.12.174 - Level 3 Communications: Level 3 is a competitive local exchange carrier based in Colorado that has an interconnection agreement with Qwest. Level 3 would like various changes made and an agreement with Qwest can not be reached. This case is on hold awaiting similar arbitration decisions in other Qwest states.

## **Local Number Portability**

LNP is a requirement of both state and federal law that requires incumbent telephone companies to “port” telephone numbers to competitive companies, mainly wireless carriers, so customers switching from the incumbent carrier to a wireless carrier can keep the original telephone number.

D2006.8.121 - IDT America: IDT has filed a complaint against CenturyTel because CenturyTel is refusing to port local telephone numbers of customers who have asked to change carriers. MCC filed comments in support of IDT. This case is filed under the expedited complaint processing procedures, which are set forth in statute but have never been used. IDT has asked for interim relief and a hearing is scheduled for 10/15/06.

## **Legislation**

Qwest and other carriers are supporting legislation (LC0039) that would essentially deregulate everything except the residence and business access line. MCC opposed the bill and has consistently opposed similar concepts. The Energy and Telecommunications Interim Committee (ETIC) recently voted 6-2 to adopt this legislation as a committee bill.

## **BOB NELSON PROVIDED THE FOLLOWING HIGHLIGHTS OF CASES**

### **CURRENTLY PENDING:**

#### **NorthWestern Energy**

D2006.6.82 - Joint Application of NorthWestern Corporation and BBIL for Approval of Sale and Transfer of NorthWestern Corporation: The Commission issued Procedural Order 6754 on 7/20/06 and MCC has been submitting discovery. NWE and BBI both submitted a request for a protective order with special provisions, primarily to exclude other parties from being able to review certain information

requested. The Commission essentially denied the requests for special provisions, which resulted in suspension of the procedural schedule.

FERC Docket No. EC06 -127: This docket concerns the same merger as D2006.6.82 except this case is before FERC. MCC filed supplemental comments on 8/14/06 asking FERC to clarify Commission statements regarding their authority to act on the merger and to clarify policy on acquisition premiums not recoverable through FERC rates. NWE and BBI filed a joint answer asserting the acquisition premium would not be passed on to customers and state jurisdiction would not be adversely affected.

N2005.12.172 - 2005 Electric Default Supply Procurement Plan: This plan can be found at [www.montanaenergyforum.com](http://www.montanaenergyforum.com). The Commission does not approve these plans, because they are trying not to engage in pre approval, but they do provide comments and information they hope NWE will include in their planning process. MCC filed comments on 5/5/06 stating that it appeared NWE did not actually execute their planning process or acquire any long term resources. Proposed DSM levels and alternatives if those levels did not materialize were also concerns for MCC, as was the proposed auction and what the result would be in a non competitive wholesale market. The Commission, in written comments, agreed with MCC's concern regarding lack of progress in long term resource acquisition. Bob feels it was important that the Commission emphasize reasons for not wanting to engage in pre approval and that it is NWE's job to manage procurement. The Commission felt the auction process was theoretically consistent with Commission procurement rules but the plan did not provide enough information to comment on the reasonableness of any outcome. The Commission felt that NWE had not sufficiently addressed the potential carbon tax risk and NWE understated the avoided cost they were using in demand side resource acquisitions, emphasizing again that NWE should aggressively attempt to reduce reliance on short term markets and engage in longer term planning.

Lewis and Clark County - Cause No. BDV 2006-35, NWE v. Montana Department of Public Service Regulation: This case is the appeal of Final Order 6621a issued on 1/17/06 in the 2004 case. The issue here is whether income tax affects should be netted out of the other tax increases. MCC and the Commission both agree that they should be, while remaining consistent with legislative language. NWE's feels that the practical effect of having a tracker is that during the following year the addition of the property tax recovery adds to the income which leads to an income tax increase the following year so in effect, there is no impact on income tax netting. MCC and the Commission feel that with this position taken, in effect, the amendment adopted to that tax tracker language would be meaningless. NWE has filed its final brief and an outcome is pending.

D2006.5.66 - Annual Electric Tracker: Additional analysis has been filed in this tracker, which covers the current period. A 4% increase is being proposed and Interim Order 6740a was issued on 8/1/06 approving that request. The Commission issued Notice of Commission Action suspending the procedural schedule, saying this tracker will be rolled into next year's tracker so this interim will be in place until the Commission takes action on the combined cases.

D2006.8.119 - Electric Trackers: The September Electric Tracker filed 8/15/06 resulted in a residential rate increase to \$.0488/kWh, or 11.4%.

D2006.5.58 - Annual Gas Tracker: MCC recently filed the testimony of George Donkin. Mr. Donkin voiced concerned with how NWE is handling their gas procurement, indicating that due to some of the fixed price deals NWE entered into for summer injections, supply costs have actually increased by \$4.1 million over what they would have been had they not engaged in those transactions. However, NWE practices appear to be consistent with what the Commission approved in the gas procurement planning docket a few months ago, so Mr. Donkin did not recommend any disallowances. Since the Commission clearly has indicated they do not want to consider financial hedging any further, Mr. Donkin did not make any

recommendations about financial hedging, even though that may have minimized the additional \$4.1 million.

D2006.7.102 - Gas Trackers: The August Gas Tracker filed 7/15/06 resulted in a gas cost decrease from \$7.56 to \$6.72 (Residential rates decreased from \$10.66 to \$9.70, or -9.05%); The September Gas Tracker filed 8/15/06 resulted in a gas cost decrease from \$6.72 to \$6.65 (Residential rates decreased from \$9.70 to \$9.63, or -7%). NWE rates are still fairly high due to the amount of fixed price purchases they have engaged in and the amount injected into storage at those fixed prices. Prices are coming down, but are still quite high compared to MDU and EWM current gas trackers.

### **Montana Dakota Utilities**

D2003.4.49, D2004.4.55, D2004.5.69 - MDU Annual Gas Tracker Reviews: MCC filed the testimony of Mr. Donkin on 2/23/06. Mr. Donkin found that MDU managed gas purchases better than NWE had, at least in terms of managing the storage of natural gas. Mr. Donkin recommended considering financial hedging to help reduce price volatility. The Commission issued Final Order 6691b on 8/4/06, rejecting the recommendation of any financial hedging investigation or experiments because they found MDU's procurement practices acceptable.

D2006.5.77 - Monthly Gas Cost Trackers: The August monthly tracker filed 7/11/06 resulted in an increase of \$0.21/dk showing current gas costs of \$7.69/dk; the September monthly tracker filed 8/10/06 resulted in an increase of \$0.80/dk showing current gas costs of \$8.48/dk; the October monthly tracker filed 9/8/06 resulted in a decrease of \$0.21/dk showing current gas costs of \$7.28/dk. Costs for MDU one year ago were around \$11.00/dk.

### **PPL Montana**



FERC Docket No. ER99 - 3491 PPL Montana Market Power Issues: MCC filed a Motion for Rehearing on 6/16/06. FERC issued an order on 7/3/06 granting rehearing for further consideration. MCC was concerned about this because now FERC could let things sit since there is no deadline for them to take action. MCC may consider filing a petition for judicial review if the action FERC eventually takes is unfavorable.

### **Market Rates**

FERC Docket No. RM04-7-000 Market Based Rates for Wholesale Sales: Bob feels that FERC may have had some difficulty with the order they issued regarding MCC's complaints about market based rate authority for PPL. The order rejected MCC's position and was, for the most part, outcome oriented so there were no sufficient answers for some of MCC's concerns, other than FERC saying some concerns should be dealt with prospectively and they were not going to retroactively apply any of those conditions to PPL. At the same time, FERC noted they would instigate a general review of market based rate authority applications. FERC did initiate a rulemaking docket and MCC filed comments on 8/7/06. The comments were consistent with concerns in the PPL case, mainly that spot markets and FERC emphasis on current spot purchase opportunities do not say anything about what long term costs are in capacity markets. The benefit of participating in this docket, aside from future benefits that may result from better FERC rules, is that this case will provide more background for any judicial review MCC may want to see from the FERC order.

### **Energy West**

D2006.6.83 - EWM Monthly Gas Tracker: The September monthly tracker filed 8/9/06 resulted in a residential rate increase to \$8.79/Mcf and the October monthly tracker filed 9/6/06 resulted in a residential rate decrease to \$7.84/Mcf.

D2005.12.177 - USB Charge and Annual Reconciliation of Gas Costs: EWM had some complicated surcharges and ways of funding their USB programs. MCC, EWM and Energy Share entered into a stipulation, filed with the Commission on 8/30/06, after discussing how these surcharges should be dealt with. Five separate surcharges had been developed historically for USB programs with charges for those funding sources amounting to 1.72% of revenues, basically resulting in an over collection of \$500,000 that EWM wanted to turn over to Energy Share in a one-time allocation. In the stipulation EWM agreed to merge all charges into one 1.25% USB charge that will be tracked from year to year with a disbursement plan submitted to the Commission. There will also be a low income discount averaging 20% allocated on a sliding scale based on income from 16% to 20% and prior years excess funds will be used to institute their weathization program.

D2006.8.130 - Application to Continue Environmental Surcharge: This surcharge funds environmental remediation of contamination created as a part of a manufactured gas process. The application, filed on 8/29/06, amounts to a .04 cent MCF increase.

### **Cut Bank Gas Company**

D2006.2.15 - General Gas Rate Increase: This application was filed on 2/3/06. CBG is requesting an increase of \$159,000, or 8.6%. MCC entered into a stipulation with CBG, filed 5/8/06, for a revenue increase of \$136,000 and a \$13.00 monthly service charge. The Commission issued Final Order 6720c on 8/4/06, determining the stipulation would result in just and reasonable rates, but indicated they were alarmed with some of the management practices of CBG. The Commission felt some practices were questionable and stressed concern about CBG ultimately having to petition for bankruptcy. CBG is required to file monthly reports for Commission review.

### **Havre Pipeline Company**

D2006.8.114 - Application to Increase Rates: Havre Pipeline Company provides service to some farmstead customers along its pipeline in Northern Montana and are requesting a rate increase to \$6.65.

### **Westech Energy Corporation**

D2006.7.108 - Application to Establish Interim Rates: This application was filed on 7/21/06, requesting implementation of interim rates for natural gas transportation in Stillwater County. MCC has intervened in this case.

### **Molnar v. PSC**

The District Court recently dismissed the complaint of Molnar v PSC due to lack of jurisdiction, finding that the District Court would only have jurisdiction if the complaint had been filed within 30 days.

### **BPA Residential Exchange**

Larry Nordell discussed BPA's Residential Exchange. The Northwest Power Planning and Conservation Act, passed in 1980, was designed to allow BPA to acquire resources to meet the future power needs of its customers. The Act came out of a long struggle that included efforts to build thermal plants and to pay for them through a "net billing" arrangement that was, in effect, a way to average their costs with those of the federal hydro system. Cost overruns on the first efforts to build nuclear plants showed the inadequacy of net billing and a long series of negotiations ensued. The resulting compromise put a priority on energy conservation and set up the Northwest Power Council to plan for the region and to oversee BPA's resource strategies. The compromise also tried to ensure a fair sharing of the benefits of the federal hydro system among competing parties, allowing for continued service to the aluminum industry at priority rates, and set a mechanism for sharing the benefits

with the residential and small farm customers of the IOU's in the region, based on the difference between their average system cost and BPA's priority firm power rate.

Montana Power Company and the other IOU's got a small benefit out of the residential exchange in the early years, but MPC's average system cost soon fell below the BPA PF rate and MPC dropped out of the program, staying out until 2001. At that time, BPA was renewing its contacts and a regional settlement was reached that allocated a set amount for the residential exchange. In negotiating the settlement, MPC ended up with roughly \$3 million per year out of a total which is now about \$300 million. The negotiated settlement did not rely on any formulas involving ASC and the PF rate, but rather was a compromise worked out among the IOU's and the Public customers of BPA.

For the past year BPA has been engaged in a "regional dialogue" with its customers and stakeholders. Because of the history of litigiousness among its customers, BPA has encouraged the parties to negotiate a settlement for the sharing of benefits starting in 2011 when the current contracts expire. BPA has constructed a fallback proposal that it believes would withstand legal challenge, but indicates it would prefer a regionally negotiated settlement to avoid negotiation.

Montana is in an odd situation because the four state commissions are trying to negotiate for a total Residential Exchange benefit that would match the current level of \$300 million, adjusted for inflation. They propose a 2011 level of \$350 million. By contrast, BPA's fallback proposal suggests a total benefit of \$250 million. The four state commissions also propose they will negotiate the sharing of the total benefit among the four states, after BPA has agreed on the total level. They want to present a unified position to negotiate with BPA and the Publics. Montana's quandary is that in the fallback proposal, BPA has also proposed a formula for allocating the \$250 million among the IOU's. Early calculations indicated that NWE's share would be roughly 2% or \$5 million (compared with 1% of the current \$300 million NWE currently receives under the 2001 settlement). More recent calculations put NWE's

share of the fallback proposal residential exchange as high as \$8 million. On the other hand, Montana could benefit by participating in the regional effort to raise the total benefit and then, if that effort is successful, negotiate with the other states for a share of the total that matched or exceeded what it would get under the fallback proposal. Neither approach guarantees Montana anything, given the likelihood of litigation. Some of the public customers appear unhappy, even with the \$250 million level proposed by BPA. Steve Wright has recently told the four state Commissions that the allocation among the IOU's must be negotiated simultaneously with the total amount of the benefit, and that must be done before the end of this month. It is unlikely that is even possible and MCC will continue to follow this issue closely.

### **LEGISLATIVE ISSUES**

Bob's view of draft bill LC170, which seeks to reform electric deregulation laws and the concept of reintegration of utility ownership of generation is that it could be helpful. One main objective is the potential integration of resources as an option for the default supply. In the draft bill, that was recently approved by ETIC, there are some areas that Bob wishes were written differently, such as trackers and pre approval. The draft bill requires that the Commission establish an electricity cost recovery mechanism allowing a public utility to fully recover prudently incurred electricity supply costs which must provide for prospective rate adjustments for cost differences resulting from cost changes, load changes and the time value of money on the differences. MCC recommended, in comments, that this language be replaced by language limiting the use of trackers to costs that are volatile and outside the utility's control. MCC also objected to tracking the costs of utility-owned or leased generating resources or long-term power purchase contracts with fixed or predictable prices. Regarding pre approval, the draft bill allows the utility to request pre approval for a new generating resource that is not yet procured. MCC believes that pre approval of new utility generating resources is unwarranted and harmful to customers. If such pre approval is considered, it is important that it be limited to the projected costs and reliability of the resource. The ETIC did not discuss these

concerns, but did make one technical change regarding burden of proof for large industrial customers coming back, which is inline with Commission comments, but otherwise approved the draft as it stood.

Bob responded to Senator Kitzenberg's concerns regarding MDU and Qwest over-earning. Commission authority to initiate rate reviews is currently the subject of litigation. It might be helpful if this could be clarified in statute and Bob suggested to Senator Kitzenberg that Senator Toole's bill during last session may have been able to do that. There are limitations in that bill that go beyond MCC's view of the Commission's existing authority. Whether or not to pursue this type of issue is something that should be considered in that light, to the extent that those authorities can be established. Another area of consumer oriented and utility legislation that Bob discussed with Senator Kitzenberg is how the tax tracker is implemented.

## **FINANCIAL REPORT**

The current financial report was presented to the committee. Because the reports run a few months behind and with the new fiscal year just beginning in July, there is not much information for review at this time.

## **BUDGET**

Bob discussed the budget development process for the next biennium. The FY08 and FY09 figures are based primarily on actual FY06 levels, as well as inflation, deflation, and Department of Administration fixed costs. The FY08 budget request is \$1,483,626 and the FY09 request is \$1,497,858, which includes a \$250,000 contingency account for both years. These amounts result in a 2.2% and 1% increase. The personal services figures are based on current salary levels and full staffing. Other Services includes contracted services, which is the largest component of the budget and the most difficult to forecast. In fiscal year 2006, the contracted services budget was exceeded and some of the contingency account

was used. For 08 and 09, the 07 amount was increased by 2%, instead of using the higher 2006 actual. Most of the other items in other services were provided by the Department of Administration. The Supplies budget is based on 06 actual expenditures. Many of the Communications figures were provided by the Department of Administration. The request for Travel is primarily the 07 budget. Rent is based on rent agreements and we have recently added more space. Repair and maintenance is based on contracts we have. Other Expense is based on the 06 expenditures but adjusted for estimated increases, mainly in subscriptions. Bob noted that committee approval is needed before the budget request can be submitted to the budget office for inclusion in the budget book. Bob also said that the tax rate that funds the office is adjusted every year, and recently went from 7 hundredths of a percent to 6 hundredths.

MOTION: Representative McNutt moved to accept the budget as proposed to the committee.

VOTE: The motion passed unanimously.

The next meeting will be held on November 21 at 1:30.

### **Public Comments**

Based on HB94 requirements, a public comment period was offered, but none was given.

### **Adjournment**

There being no further business to come before the committee, the meeting adjourned.

Respectfully submitted,

\_\_\_\_\_, Robert Nelson, Consumer Counsel

Accepted by the Committee this \_\_\_\_\_ day of \_\_\_\_\_, 2006

\_\_\_\_\_, Chairman.